

IN THE KENTUCKY PUBLIC SERVICE COMMISSION

IN RE:

Case No. 2003-00433
AN ADJUSTMENT OF THE GAS AND ELECTRIC RATES,
TERMS, AND CONDITIONS OF LOUISVILLE GAS AND
ELECTRIC COMPANY

and

Case No. 2003-00434
AN ADJUSTMENT OF THE ELECTRIC RATES, TERMS, AND
CONDITIONS OF THE KENTUCKY UTILITIES COMPANY

* * *

SWORN STATEMENT

OF

JOE F. CHILDERS, JR.

(TELEPHONICALLY)

AUGUST 2, 2005

received
8/19/05
mr

LAUREN I. MILLER, R.P.R.
Coulter Reporting, LLC
101 East Kentucky Street
Suite 200
Louisville, Kentucky 40203
(502) 582-1627
FAX: (502) 587-6299
E-MAIL: coulterllc@bellsouth.net

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A P P E A R A N C E S

SPECIAL GENERAL COUNSEL TO THE PUBLIC SERVICE
COMMISSION:

JONATHAN D. GOLDBERG, ESQ.
Goldberg & Simpson
3000 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

1 The sworn statement of JOE F. CHILDERS,
2 JR., taken telephonically in the offices of Goldberg &
3 Simpson, 101 South Fifth Street, Suite 3000,
4 Louisville, Kentucky, on Tuesday, the 2nd day of
5 August, 2005, at approximately 11:15 a.m.

6
7 * * *

8
9 JOE F. CHILDERS, JR., after first being
10 duly sworn, was examined and testified as follows:

11
12 EXAMINATION

13
14 BY MR. GOLDBERG:

15 Q. Would you state your full name,
16 please, sir.

17 A. Joe Francis Childers, Jr.

18 Q. And your business address?

19 A. 201 West Short Street, Suite 310,
20 Lexington, Kentucky, 40507.

21 Q. All right, sir. And your occupation?

22 A. Attorney at law.

23 Q. All right, sir. Are you in private
24 practice?

25 A. I am. I'm self-employed.

1 Q. What is the name of your organization?

2 A. Law Offices of Joe F. Childers, LLC.

3 Q. Are you familiar with the two rate
4 cases, one filed on behalf of KU and one filed on
5 behalf of LG&E? Notice of filing was in November of
6 2003. I actually filed December of 2003.

7 A. Yes.

8 Q. Did you represent a party in those
9 particular rate cases before the Public Service
10 Commission?

11 A. Yes, I represented two parties.

12 Q. All right, sir. Could you tell me who
13 they were?

14 A. The Community Action Council for
15 Lexington and other surrounding counties and the
16 Kentucky Association For Community Action.

17 Q. All right, sir. Had you had occasion
18 to represent both entities before?

19 A. Yes.

20 Q. Had you ever represented them in front
21 of the Public Service Commission before?

22 A. Yes, I have.

23 Q. Was that a representation that was
24 over the course of several years prior to November of
25 2003?

1 A. Yes.

2 Q. Had you participated -- had you
3 represented these two entities in rate cases before to
4 your knowledge?

5 A. I believe I had, yes.

6 Q. Do you possess an expertise in matters
7 before the Public Service Commission?

8 A. Not really. I usually perform a role
9 that is on behalf of the community action community, I
10 guess. It's a limited role. I don't really get
11 involved in, you know, the real technical matters
12 related to rate cases.

13 Q. All right, sir. I have
14 euphemistically heard your representation and the
15 folks over in Louisville's representation as
16 representing those of the lower income people. Is
17 that a fair observation?

18 A. That's a fair observation. The
19 community action agencies do represent the interests
20 of their constituency, which is the low income
21 community.

22 Q. All right, sir. Tell me when you
23 first became aware that KU and LG&E were intending to
24 file a rate case.

25 A. You're testing my memory. Do you have

1 the dates when you actually filed?

2 Q. I do. The notice of filing, as I
3 communicated before, was in November of 2003, and the
4 actual date of filing would have been late December of
5 2003.

6 A. It would have been right around the
7 notice of filing. Around the fall of 2003.

8 Q. And do you recall how you first
9 learned of the filing?

10 A. I think from my clients.

11 Q. All right. The actual first informal
12 conference was April 28th, 2004. Prior to the
13 informal conference had you done any work on this
14 matter, i.e., sent out document requests, prepare
15 experts for testimony, or anything such as that?

16 A. Can I put you on hold for a second and
17 consult my billing records?

18 Q. Sure.

19 A. That would give me a better idea.

20 Q. All right, sir.

21 (RECESS)

22 A. I'm looking at my billing records. It
23 looks like January of 2004 I had some involvement,
24 mainly in looking over the procedural schedules. I
25 did have a meeting with LG&E in Louisville on January

1 29th, 2004. In February 2004 I completed an initial
2 data request for LG&E and KU, reviewed some filings
3 and orders in February. In March I reviewed the
4 answers that I had gotten back to the data request on
5 March 22nd. I reviewed my client's testimony at that
6 time and revised it the next day.

7 So, yes, I guess to answer your
8 question, I did have some involvement prior to April.

9 Q. All right, sir. As you know, the
10 purpose of our inquiry is to determine contacts and
11 communication.

12 Between the time the rate case was
13 filed in December of 2003, and using the April 28th,
14 2004 informal conference date, did you have any
15 communication with the staff of the Public Service
16 Commission?

17 A. Okay. I want to take a minute so that
18 I'm -- everything I have is pretty much written in my
19 time billing record. And I don't -- other than what
20 I've got in my time billing records, I do not recall
21 any specific conversations with anyone from the Public
22 Service Commission. So let me take a second and
23 review this.

24 Q. All right, sir.

25 A. According to my billing records and my

1 independent recollection, no, I did not have any
2 conversations with anyone at the Public Service
3 Commission.

4 Q. And breaking that down into two
5 components. I take it you had no conversations with
6 any member of the staff?

7 A. That's correct.

8 Q. And I further take it that you had no
9 conversations or communication with any of the
10 commissioners themselves?

11 A. That is correct.

12 Q. All right, sir. Have we covered
13 everything prior to the informal conference of April
14 28th, 2004?

15 A. Yes, we have.

16 Q. Let's move to that date. Do you
17 recall being in attendance on that day?

18 A. Yes, I was.

19 Q. All right, sir. And tell me what you
20 recall, if anything, of the events of that day.

21 A. I drove to Frankfort, I attended the
22 prehearing settlement conference, I met with my
23 clients, and I returned. As I recall, it was a fairly
24 long conference. It looks like it lasted several
25 hours in Frankfort.

1 Q. All right, sir. Did you have
2 opportunity, either before or after the prehearing
3 conference, to engage in any settlement discussions
4 with any of the parties?

5 A. Any of the parties?

6 Q. Yes, sir. On that day.

7 A. It's possible that I did, you know,
8 with some of the parties. Particularly with the LG&E
9 and KU representatives.

10 Q. Okay.

11 A. But I don't recall any specific
12 settlement conference discussions with anyone else.

13 Q. All right, sir. Other than
14 communicating on the record with either the
15 commissioners or the staff, did you have any
16 communication other than that with any staff member or
17 commission member on April 28th, 2004?

18 A. No.

19 Q. Now, do you have a recollection or any
20 time sheet entries dealing with this matter for the
21 dates April 29th?

22 A. Yes, I do.

23 Q. All right, sir. Can you tell me what
24 course of action you took related to this matter on
25 April 29th.

1 A. On April 29th I met with my clients, I
2 met with the attorney general's representative, I met
3 with the attorney for the Legal Aid Society in
4 Louisville, I attended the settlement conference in
5 Frankfort, and met with my client after that, again,
6 for several hours. It looked like it was quite a long
7 settlement conference.

8 Q. Your records are self-explanatory
9 except for who attended the settlement conference.
10 Can you recall?

11 A. Well, I don't recall specifically.
12 I'm sure there was a sign-in sheet that would indicate
13 that. I know that -- it looks like Ms. Blackford for
14 the attorney general's office was there. Lisa
15 Kilkelly was there, I believe, from the Legal Aid
16 Society. I'm sure that LG&E and KU had several
17 attorneys there and representatives from their
18 companies.

19 Q. Are you showing this settlement
20 conference having taken place at the Public Service
21 Commission?

22 A. I'm showing it in Frankfort. I assume
23 that it was at the Public Service Commission.

24 Q. Fair enough. Do you have a
25 recollection of any member of the staff being present

1 on that day at those discussions?

2 A. Well, if I'm not mistaken, I believe
3 Richard Raff was present.

4 Q. Okay. And was he present with all
5 others of the interveners at LG&E and KU personnel?

6 A. As far as I can recall, yes.

7 Q. Do I take it you had no sidebar or
8 other conversation with Mr. Raff other than in the
9 presence of the intervening parties at LG&E/KU?

10 A. That's correct.

11 Q. All right, sir. Do you have a
12 recollection of anybody else from the staff other than
13 Mr. Raff being present on that day?

14 A. I'm not positive a hundred percent. I
15 think that Mr. Scott may have been present.

16 Q. You're familiar with Mr. Isaac Scott?

17 A. Yes.

18 Q. And do you know Mr. Jeff Shaw?

19 A. No, I don't believe I do.

20 Q. You have a recollection of Mr. Scott
21 being present on the 29th, I take it?

22 A. I don't really have an independent
23 recollection. I know he was in attendance at several
24 meetings in different cases, and I don't want to say
25 that he was definitely there that day.

1 Q. Fair enough.

2 April the 30th, which would have been
3 in Louisville, Oaks Day, the day before the Kentucky
4 Derby, do you have a recollection of having
5 participated in discussions with regard to the two
6 rate cases on that day?

7 A. No, I don't, and I don't have any time
8 records that indicate that I did.

9 Q. And you have no present recollection
10 of that?

11 A. No.

12 Q. Next date I am indicating that there
13 were participants dealing with the issues of the two
14 rate cases is May the 3rd, 2004. Do you have any
15 entries in your time records or any recollection prior
16 to May 3rd, 2004, other than what we've talked about?

17 A. No, I sure don't.

18 Q. Okay. May the 3rd, 2004, did you come
19 to the Public Service Commission and participate on
20 that day?

21 A. What date?

22 Q. May the 3rd.

23 A. No, I did not.

24 Q. Okay. Let me ask you the same
25 question -- well, let me ask you this. Do you have

1 any recollection of having discussed any of the issues
2 in the rate case with any member of the staff on May
3 the 3rd, 2004?

4 A. No, I don't.

5 Q. And I probably failed to do this. I
6 take it you did not talk to any of the commissioners
7 about these cases either on the 28th, 29th, 30th or
8 any date prior or May 3rd, 2004; am I correct?

9 A. That's correct.

10 Q. May the 4th, are you showing your
11 appearance or do you recall your appearance at the
12 Public Service Commission to talk about these issues
13 on that day?

14 A. No, I don't. Let me check my records
15 closely. Hold on just one second. I'll put you on
16 hold. I'll be right back.

17 (RECESS)

18 A. I was able to review my records.

19 Q. All right, sir. And are you showing
20 anything from May the 4th, 2004?

21 A. I am not showing any further time
22 records on this case, on this rate case, until July of
23 2004.

24 Q. Does that indicate to you that you
25 made no other appearances after -- well, your records

1 indicate no other appearances after the April 28th,
2 2004 informal conference?

3 A. After the April 29th.

4 Q. I'm sorry. Are you showing April
5 29th? Oh, you participated April 29th in settlement
6 discussion.

7 A. Yes. We talked about that.

8 Q. Yes, sir, we did.

9 So I take it you were not present at
10 any of the hearings where evidence was actually given;
11 am I correct?

12 A. Refresh my memory of the dates of
13 that.

14 Q. All right, sir, I will.

15 Testimony was actually given on the
16 record on May 4, 5, 6 and a little bit on the 12th.

17 A. Okay. I stand corrected. I was
18 present during those days or at least some of those
19 days, and for some reason I'm not able to lay my hands
20 on my time records for that period. I thought I had a
21 complete set here, but I apparently don't.

22 Q. I take it other than your time
23 records, you have no other records that would indicate
24 conversations or what you did on a particular day or
25 who you talked to?

1 A. I may have some handwritten notes as I
2 sat in the hearing. Mainly my participation was very
3 limited at those rate hearings and I sat in the
4 audience for the most part. So I may have some
5 handwritten notes. I don't have those in front of me.

6 Q. All right. Fair enough.

7 Do you have a recollection of having
8 participated in settlement discussions on any of those
9 days, May 4, 5, 6 and/or 12?

10 A. Yes, I believe I did.

11 Q. And tell me your recollection of who
12 you were communicating with on those days.

13 A. On those dates I was communicating
14 with other representatives of the low income
15 community, particularly Lisa Kilkelly and her clients
16 from Louisville, my clients from Frankfort and
17 Lexington, then particularly with the attorneys and
18 the representatives from the two companies, LG&E and
19 KU.

20 Q. Do you have a recollection of having
21 communicated with other members of the intervening
22 group?

23 A. Yes. Including the industrial
24 customers.

25 Q. KIUC?

1 A. KIUC.

2 Q. Let's see if we can agree on the
3 geography, if you will, of the situation. I have been
4 advised that there was a larger hearing conference
5 room where all interveners, KU, LG&E, and some members
6 of the PSC staff, met and had their discussions and
7 that there was at least one break-out room as it
8 relates to KU, LG&E and North American Stainless. Do
9 you agree with my description so far?

10 A. I think that's right, yes.

11 Q. All right, sir. Now, do you recall
12 there being other break-out rooms, or was that the
13 only one where there was a separate negotiation?

14 A. I think the only room that I
15 participated in any negotiations was the large room,
16 which is actually the -- I think it's Hearing Room
17 No. 2.

18 Q. Yes, sir.

19 A. Directly behind Hearing Room No. 1.

20 Q. That is correct.

21 Now, do you recall communicating with
22 the staff who you previously described to us on any of
23 those days?

24 A. I do not recall that. I recall
25 discussions with the parties, but not with the staff.

1 Q. Fair enough. Do you have a
2 recollection that the staff was actually present?

3 A. I recall from time to time, you know,
4 that a staff person might pop into the room.

5 Q. Okay.

6 A. You know, but I don't -- I don't
7 recall having any particular discussions with that
8 staff person or staff persons.

9 Q. Fair enough. And I take it that no
10 commission member appeared, as best you can recall, in
11 any of the discussions that you attended?

12 A. That's true. I never saw a commission
13 member in any of the settlement discussions.

14 Q. Do you have a recollection of the day
15 or days that the attorney general himself, Mr. Stumbo,
16 came to the proceedings?

17 A. Yes.

18 Q. And did you have an opportunity to
19 communicate with him at that time?

20 A. Yes, I did.

21 Q. Okay. Can you tell me your
22 conversation with him?

23 A. I recall sitting in the hearing room
24 during the hearing and sat beside Mr. Stumbo and had a
25 brief discussion with him. I do recall also having a

1 discussion with Mr. Stumbo in a separate room along
2 with one of his staff attorneys concerning the
3 particular interests of my clients. That was in a
4 separate room and not Hearing Room No. 2.

5 Q. All right, sir. Other than those two
6 conversations, any other conversations with the
7 attorney general?

8 A. No.

9 Q. Generally, can you tell me the sum and
10 substance of the two conversations?

11 A. As I recall sitting in the hearing
12 room during the hearing, I sat beside Mr. Stumbo and
13 joked with him, I think, that things were -- that he
14 had raised the ante or something with his, you know,
15 appearance, that any attorney general had never
16 appeared there before. And that was more or less a
17 joking matter, because I had known Mr. Stumbo when he
18 was a legislator.

19 And then the other meeting with him
20 was in a small room. I recall that it was attended by
21 Dennis Howard, a member of his staff and myself and
22 Mr. Stumbo, and somebody else from Mr. Stumbo's office
23 may have been there, I can't recall. It seems like
24 there was a female.

25 We talked about, you know, whether we

1 could get the attorney general's support for a low
2 income program that we were lobbying for as part of
3 the settlement. I recall the attorney general was
4 somewhat hesitant to give that support initially, but
5 the longer we talked the more we were able to convince
6 him that it was a good thing.

7 Q. How long was your meeting?

8 A. Probably no more than ten minutes.

9 Q. I take it you eventually agreed with
10 the settlement; am I correct?

11 A. That's correct.

12 Q. And do you believe both conversations
13 with the attorney general were prior to your
14 agreement?

15 A. Yes.

16 Q. Using our dates here, May 3, 4, 5 and
17 6 and May 12th, do you have a recollection of when
18 you, on behalf of your clients, came to agreement in
19 this matter?

20 A. With the attorney general --

21 Q. No, sir.

22 A. -- or with all the parties?

23 Q. With all the parties. Do you know
24 what day that would have been?

25 A. I believe that it would have been

1 toward the end of the hearing. I don't want to give a
2 particular date. I don't think it was the May 12th
3 date. I think we had an agreement in principle prior
4 to that. Probably the 5th or something.

5 Q. All right, sir. Do you recall whether
6 or not you attended all the hearings of the matter --
7 the two matters?

8 A. I don't believe I did.

9 Q. Okay. Were you present on a day when
10 Mr. Raff on the record recited the fact that he had
11 been listening to the radio and the attorney general
12 had made an allegation of ex parte conduct and
13 collusive and inappropriate behavior? Were you
14 present?

15 A. I don't recall hearing Mr. Raff say
16 that.

17 Q. All right, sir.

18 A. I do recall being in the room when the
19 attorney general's representative -- and I believe
20 that that was Ms. Blackford -- told the commission
21 that the attorney general after having participated in
22 the settlement discussions, you know, could no longer
23 support the settlement, or something along those
24 lines. I remember it being, you know, pretty
25 startling testimony -- or not testimony but just, you

1 know, conversation while the commission was in
2 session. This was on the record. You know, she
3 indicated that there -- that -- I can't recall how she
4 phrased it, but I know that there was a statement made
5 that the attorney general was filing, I believe, a
6 motion to dismiss or something.

7 Q. Okay. So that I'm clear, do you
8 remember this being part of the settlement discussions
9 or do you remember it being on the record in front of
10 the commissioners?

11 A. On the record in front of the
12 commissioners.

13 Q. All right. Did this occur after your
14 clients had agreed to settle?

15 A. I believe it did.

16 Q. All right, sir. And you remember that
17 being on the record. Were you present in Hearing Room
18 2 when members of the attorney general's staff
19 indicated that the attorney general could no longer
20 support a settlement agreement at a certain number?

21 A. I do believe I was present, yes.

22 Q. And so that I'm clear, what you're
23 communicating is it occurred a second time on the
24 record in front of the commissioners?

25 A. I believe so. I believe that occurred

1 after we learned of it in the Hearing Room No. 2.

2 Q. Do you believe it was on the same day?

3 A. It seems like it was.

4 Q. Fair enough.

5 Now, did you come back on May the
6 12th, or can you distinguish between May 6th -- the
7 events of May 6th and the events of May 12th?

8 A. I'm having a difficult time
9 distinguishing that in my mind without further
10 refreshing my memory.

11 Q. Fair enough. With regard to all of
12 the proceedings, do you have any recollection of any
13 conversation ever with any of the commissioners?

14 A. Not with the commissioners, no.

15 Q. And other than what you've already
16 told me about your conversations with the staff, do
17 you have any recollection of any other conversations
18 with the staff?

19 A. You know, I believe that I and some of
20 the other members of the low income community,
21 particularly Ms. Kilkelly, myself, possibly one or two
22 of our clients, I believe we did have a meeting, and
23 this occurred in the vending machine room in the
24 basement of the commission during the settlement
25 discussions.

1 I know that there were a couple of
2 representatives from LG&E there with us discussing
3 settlement, and I'm thinking -- although I could be
4 wrong -- I'm thinking that either Mr. Raff or someone
5 else from the staff came to that settlement discussion
6 to give their viewpoint on what we were trying to
7 accomplish. But all the parties were there, you know,
8 in settlement discussions. And it seems like we had
9 some sort of input, I guess it was, from the staff.

10 Q. Did you settle as a result of that
11 particular meeting, or do you recall?

12 A. I know that that meeting helped things
13 along quite a bit, because we got an idea of the way
14 that the staff was looking at it and the way that the
15 parties were looking at it. I think it did help us
16 ultimately.

17 Q. And am I interpreting your comments
18 that this was a meeting in the vending machine room
19 with LG&E/KU personnel and your client and
20 Ms. Kilkelly?

21 A. Yes.

22 Q. All right. Now, was the result of
23 that conversation reported back to the group as a
24 whole?

25 A. Yes, at some point it was.

1 Q. All right. Fair enough.

2 Other than that conversation that
3 you've just referenced, do you have any recollection
4 of any other conversations with the staff from April
5 28th, 2004 through May the 12th, other than what
6 you've already told me?

7 A. No, I don't.

8 Q. Now, while I know that you understand
9 the concept of ex parte, being a lawyer, being
10 communication, can we agree upon that?

11 A. Yes.

12 Q. And I'm taking it from your testimony
13 you never saw -- well, you never participated in any
14 ex parte communication or saw, were present at any
15 time when there was an ex parte communication; am I
16 correct?

17 A. With the commissioners?

18 Q. Yes, sir.

19 A. No, I was not.

20 Q. And do I take it that other than what
21 you've told me about your communication with the
22 staff, you're aware of no other ex parte
23 communication; am I correct?

24 A. That's correct.

25 Q. Further, the communications, as I

1 understand it, you had with your staff were either in
2 front of the other intervening parties or were
3 reported to the other intervening parties as in the
4 last conversation we talked about?

5 A. Yes, that's true.

6 Q. Now, while one can argue what the
7 terms collusive and inappropriate are, and that's
8 personal to folks, did you yourself witness anything
9 during your participation in these two rate cases
10 which you personally believed to be evidence of
11 collusive behavior or inappropriate conduct?

12 A. No, I did not.

13 MR. GOLDBERG: All right, sir. That's
14 all I have. I thank you very much for your time. I
15 recognize this is out of your ordinary day-to-day work
16 activity and we appreciate it.

17 We will get this statement out to you,
18 and if you would send it back to me, I'd be much
19 appreciative.

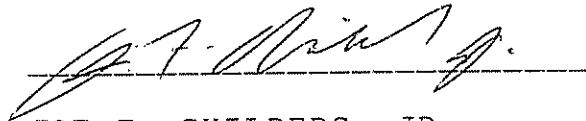
20 THE WITNESS: I will do that.

21 MR. GOLDBERG: Thank you, sir.

22
23 (SWORN STATEMENT CONCLUDED AT 11:45 A.M.)
24

25 * * *

1 I, the undersigned, JOE F. CHILDERS,
2 JR., do hereby certify that I have read the foregoing
3 sworn statement and that, to the best of my knowledge,
4 said sworn statement is true and accurate, with the
5 exception of the corrections, if any, listed on the
6 errata sheet.

7
8
9 
10 JOE F. CHILDERS, JR.

11
12 Subscribed and sworn to before me this 15
13 day of November, 2005.

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15
16
17 
18 NOTARY PUBLIC
19

20
21 My commission expires January 17, 2007
22
23
24
25

1 STATE OF KENTUCKY) (

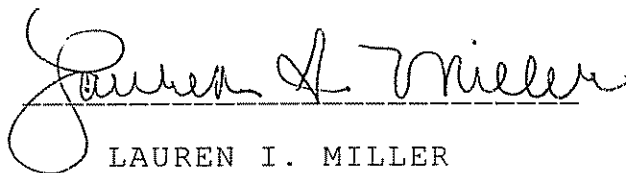
2 COUNTY OF JEFFERSON) (

3 I, LAUREN I. MILLER, Notary Public,
4 State of Kentucky at Large, hereby certify that the
5 foregoing sworn statement was taken at the time and
6 place stated in the caption; that the appearances were
7 as set forth in the caption; that prior to giving
8 testimony the witness was first duly sworn by me; that
9 said testimony was taken down by me in stenographic
10 notes and thereafter reduced under my supervision to
11 the foregoing typewritten pages and that said
12 typewritten transcript is a true, accurate and
13 complete record of my stenographic notes so taken.

14 I further certify that I am not related
15 by blood or marriage to any of the parties hereto and
16 that I have no interest in the outcome of captioned
17 case.

18 My commission as Notary Public expires
19 March 26, 2009.

20 Given under my hand this the 17th day
21 of August, 2005, at Louisville, Kentucky.

22
23 

24 LAUREN I. MILLER
25 NOTARY PUBLIC

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